



United States Government Accountability Office  
Washington, DC 20548

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## Decision

**Matter of:** Kipper Tool Company  
**File:** B-409585.2; B-409585.3  
**Date:** June 19, 2014

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Stan Hinton, Esq., Stan Hinton Law Office, for the protester.  
Anne B. Perry, Esq., Jonathan S. Aronie, Esq., David S. Gallacher, Esq., and Townsend L. Bourne, Esq., Sheppard Mullin Richter & Hampton LLP, and Robert A. Van Kirk, Esq., Edward C. Reddington, Esq., and Ryan H. Creighton, Esq., Williams & Connolly LLP, for W.W. Grainger, Inc., an intervenor.  
Stephen T. O'Neal, Esq., General Services Administration, for the agency.  
Jennifer D. Westfall-McGrail, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest is denied where record fails to support protester's allegation that successful vendors offered an item manufactured in a country not on the Trade Agreements Act designated country list.

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### DECISION

Kipper Tool Company, of Gainesville, Georgia, protests the failure of the General Services Administration (GSA) to establish a blanket purchase agreement (BPA) with it under request for quotations (RFQ) No. 819581, for maintenance, repair, and office supplies. Kipper argues that the quotations of the successful vendors should have been found unacceptable.

We deny the protest.

### BACKGROUND

The RFQ, which was issued on October 8, 2013 to GSA Multiple Award Schedule (MAS) 51 V contract holders, sought to establish multiple BPAs for maintenance, repair, and office (MRO) supplies as part of GSA's Federal Strategic Sourcing Initiative (FSSI). The solicitation estimated that the total value of purchases to be made under the BPAs was more than \$1.8 billion (\$236 million annually). RFQ at 3. While the solicitation contemplated the establishment of BPAs for three categories

of supplies (hardware; tools and tool cabinets; and paints, adhesives, and sealants), Kipper competed for--and thus its protest pertains to--the tools category only.<sup>1</sup> For the tools category, GSA intended to establish 6 BPAs, 4 of which were to be set aside for small businesses. The ordering period under the BPAs was to be one year, with four 1-year option periods.

Of relevance to this protest, the solicitation required that all items included in a vendor's quotation be available on the vendor's MAS 51 V contract prior to the RFQ's closing date. Id. at 2. Also of relevance to Kipper's protest, the RFQ required that the vendor be an AbilityOne distributor prior to submission of its quotation, and that items furnished comply with the requirements of the Trade Agreements Act (TAA).<sup>2</sup> RFQ at 11.

The RFQ provided that quotations would be evaluated on a lowest-priced, technically acceptable basis, with the evaluation process consisting of an administrative compliance requirements review, a technical review, and a price evaluation. Id. at 33. As part of the administrative compliance requirements review, the technical evaluation team was to verify that, among other things, vendors had provided assurances that the offered items were TAA compliant.<sup>3</sup>

Quotations meeting all of the administrative compliance requirements were then to be evaluated on a Go/No Go basis under a number of technical factors. Among the Go/No Go factors, vendors were to demonstrate that they were AbilityOne authorized resellers and that they had the ability to provide 100 percent of the

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<sup>1</sup> The RFQ identified the following as examples of products in the tools category: wrenches, shears, screwdrivers, scissors, saws, knives, hammers, drills, tool sets and kits, tool batteries, and tool cabinets. The solicitation indicated that this category was estimated to account for 10-20 percent of the overall MRO spending.

<sup>2</sup> The TAA generally requires that end products be acquired from the U.S. or designated countries. 19 U.S.C. § 2512(a)(1)(A) (2006); ARKRAY USA, Inc., B-408981.4, Mar. 5, 2014, 2014 CPD ¶ 90 at 4 n.6.

<sup>3</sup> Other administrative compliance requirements were that the vendor have (1) demonstrated the ability to meet the RFQ's environmental sustainability requirements; (2) demonstrated the ability to provide order status and tracking capabilities through *GSA Advantage!*®; (3) provided assurance that the items would be compliant with the Berry Amendment; (4) furnished a required certification pertaining to unpaid delinquent federal tax liability and felony convictions under federal law; and (5) agreed to provide agency-specific reports at no additional cost. Id. at 34-35.

market basket items.<sup>4</sup> In this regard, the RFQ provided that GSA would perform “random sample verification . . . to ensure that products offered meet the descriptions and environmental attributes, are TAA and ETS [Essentially-the-Same] requirement compliant, and are on the Contractor’s MAS 51V contract.” Id. at 36. The RFQ further provided that if a quotation did not offer all of the market basket items or offered items that did not meet the market basket item descriptions and the specified regulatory requirements, the quotation would receive a No Go rating. Id.

The RFQ required vendors to furnish prices for a specific list of items (identified as market basket items), and advised that the price evaluation would be based on the market basket items only, although the full catalogue of MRO supplies available on the vendor’s MAS contract would be included and available under the resulting BPA.<sup>5</sup> RFQ at 9. The market basket items for each category, along with an estimated annual volume for each item, were listed on an MRO supplies quote sheet included as an attachment to the RFQ.<sup>6</sup> Vendors were to provide the name of the manufacturer of the item, the model number (using either the manufacturer part number or the standard wholesaler part number), the UPC-A number, the item’s country of origin (to ensure TAA compliance), the vendor’s current GSA schedule price for the item, and the proposed BPA price. Vendors were also to provide aggregated sales discounts. Using the proposed BPA prices, the estimated quantities, and the proposed tiered discounts, the agency was to calculate a weighted total extended market basket value for each category.

The agency received 21 quotations by the amended closing date of December 5, 2013. The agency evaluated the quotations for compliance with both the administrative compliance requirements and the Go/No Go factors, and sought clarifications from each vendor. Twenty vendors responded (one withdrew its quotation). Based on the responses, GSA concluded that all quotations met the administrative compliance requirements. The agency further concluded, based on the responses and random sample verification, that all quotations were acceptable under the various Go/No Go technical factors.

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<sup>4</sup> As discussed below, the market basket items were a subset of items drawn from the MAS 51 V schedule, for which vendors were to submit discounted prices.

<sup>5</sup> In responding to the protest, the agency explained that the market basket pricing strategy was chosen because the companies holding MAS 51 V contracts offer a broad range of products, making it impossible to conduct an apples-to-apples comparison of contractors’ entire catalogues; requesting prices on a subset of approximately 300 high spend items only (i.e., the market basket) made it possible for the agency to compare prices on a uniform pool of items. Contracting Officer’s Statement of Facts at 3.

<sup>6</sup> The market basket for the tools category consisted of 93 items.

The agency then evaluated vendors' pricing and conducted a reverse auction by requesting and accepting two rounds of revised pricing submissions.<sup>7</sup> Based on the final round of revised pricing, the following six vendors were selected to receive BPAs for the tools category:<sup>8</sup>

Vendor	Extended Market Basket Price
Noble Supply & Logistics	\$481,916
W.W. Grainger, Inc.	\$486,443
Premier & Companies, Inc.	\$509,168
The Office Group, Inc.	\$761,177
WECsys, LLC	\$795,352
SPS Industrial, Inc.	\$846,592

Award Decision Document, Feb. 27, 2014, at 2. The protester's price for the tools market basket (of [deleted]) was 12th low.

By letter of February 28, 2014, the contracting officer notified the protester that its quotation had not been selected and that BPAs would be established with the above vendors. In response, Kipper asked the contracting officer to provide it with the part numbers and unit prices of the items quoted by the successful vendors. The contracting officer furnished this information on March 6, and Kipper protested to our Office on March 14.

## DISCUSSION

Where an agency conducts a formal competition for the establishment of BPAs, we will review the agency's actions to ensure that the evaluation was reasonable and consistent with the solicitation and applicable procurement statutes and regulations. OfficeMax, Inc., B-299340.2, July 19, 2007, 2007 CPD ¶ 158 at 5.

The protester contends that five of the selected vendors listed--on their MRO supplies quote sheets--an item manufactured in a country not on the TAA designated country list, in violation of the RFQ requirement for TAA compliance. Specifically, Kipper argues that for item T056 (Arbor Mount Flap Disc), SPS, The

<sup>7</sup> Regarding a reverse auction, the solicitation noted that the agency may "publish the best offered price information to all contractors with the aim of aiding them in more effectively revising their quotations." RFQ at 38.

<sup>8</sup> All of the companies selected to receive BPAs, with the exception of W.W. Grainger, are small businesses.

Office Group, Grainger, Premier, and WECsys all offered an item manufactured in Turkey.<sup>9</sup>

As an initial matter, the record reflects that each vendor provided a declaration assuring that the items were TAA compliant or that it would continue to assure compliance with its TAA certification in connection with its underlying GSA schedule contract. Moreover, with regard to T056 specifically, the record shows that, SPS, The Office Group, and Grainger each identified the country of origin for the listed item as CA [Canada], whereas both WECsys and Premier identified the country of origin as US. Canada is on the designated country list; accordingly, there was nothing on the face of the quote sheets that would have placed the agency evaluators on notice that the country of origin for any vendor's item might be other than the U.S. or a TAA designated country. See Leisure-Lift, Inc., B-291878.3, B-292448.2, Sept. 25, 2003, 2003 CPD ¶ 189 at 8 (an agency may properly rely upon a firm's representations/certification of TAA compliance unless the agency has reason to believe that the firm will not provide a compliant product).<sup>10</sup>

Kipper further argues that four of the selected vendors (i.e., Premier, The Office Group, WECsys, and SPS) were not authorized resellers of Snap-On tools as of the RFQ closing date, and thus fail to comply with the solicitation requirement that all items included in their quotations be available on their MAS 51 V contracts prior to RFQ closing.

Availability, per the solicitation, however, was simply a question of whether a vendor listed item was on the vendor's MAS 51 V contract at the time the RFQ closed. RFQ at 2. Whether a vendor is capable of supplying items listed on its quote sheets, in this case Snap-On tools, is a performance requirement, which does not affect the award decision except as a matter of responsibility. See Wright Tool Co., B-272413, Sept. 11, 1996, 96-2 CPD ¶ 113 at 3. Since the responsibility determinations were made in connection with the successful vendors' MAS 51 V

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<sup>9</sup> While the protester asserts that the debriefing materials provided by the agency indicate that each of the above firms quoted either part number DW8309 or 6HD3 for item T056, and that both numbers refer to an arbor mount flap disc manufactured by DeWalt, the record does not support this allegation with regard to WECsys. That is, the record indicates that for item T056, WECsys offered an item with a different number from a manufacturer other than DeWalt. AR, Tab 5.

<sup>10</sup> In response to the protester's allegation, GSA took the additional step of contacting the manufacturer of the item offered by the vendors (i.e., DeWalt) to verify the item's country of origin. The Vice President of Sales for Stanley Black & Decker--Industrial & Automotive Repair Division, of which DeWalt is a subsidiary, indicated that the model number in question is manufactured in two different locations: Turkey and Canada. Agency Response, May 9, 2014, Exh. 6.

contracts, no such further determination was required here. Synergetics, Inc., B-299904, Sept. 14, 2007, 2007 CPD ¶ 168 at 3 n.2.

We dismiss the protester's remaining allegations since it is 12<sup>th</sup> in line for award and therefore not an interested party to raise the issues. Specifically, the protester alleged that for item T117 (Pliers, Vice Grip), Noble listed an item manufactured in China.<sup>11</sup> Kipper also alleged that SPS violated the RFQ's requirements pertaining to AbilityOne by identifying an item as AbilityOne on its supplies quote sheet when the item was not identified as AbilityOne on SPS's MAS 51 V contract, and that Grainger listed a number of items on its supplier quote sheet that were not on its schedule contract as of the closing date of the RFQ.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. § 3551-3556 (2006), only an "interested party" may protest a federal procurement; that is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Where, as with regard to each of the preceding allegations, a protester would not be in line for contract award were its protest to be sustained, it is not an interested party to protest. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>11</sup> In its initial protest, Kipper also alleged that for item T001(Air Impact Wrench), WECsys listed an item manufactured in China. The record shows that during clarifications, WECsys submitted a different item for the one that, according to the protester, is manufactured in China--thus, whether the originally listed item is manufactured in China is a moot point. We also note that the protester appears to have abandoned its protest pertaining to this item by failing to pursue the matter in its final comments.